THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 25762 of 2006

Dated: 13.12.2006

Between:

K. Kambala Rao, S/o K. Pullaiah, aged about 51 years, R/o Batala Moguturu (village and post), Penumantra Mandal, West Godavari District.

....
PETITIONER

AND

A.P.S.R.T.C., Musheerabad, Hyderabad, rep. by its Managing Director and others.

.....RESPONDENTS

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Order:

The petitioner is working as Driver with the respondents-APSRTC. While discharging his duties as driver, the third respondent herein directed him to attend periodical medical examination. Accordingly, the petitioner attended the periodical medical examination and in the medical examination as he was declared unfit for A-1 category driver due to defective distant vision (right eye), the third respondent, vide proceedings dated 07.01.2006, placed the petitioner under forced leave for a period of one year. Thereafter, the petitioner made a representation dated 17.11.2006 requesting the Regional Manager to permit him to attend to duties and to provide alternative employment. Since, no action has been taken on the said representation, the present writ petition is filed seeking a direction to the respondents to provide alternative employment to the petitioner in terms of Section 47 of the Persons with Disabilities (Equal opportunities, protection of rights and full participation) Act 1 of 1995 (for short 'the Act').

Learned counsel for the petitioner submitted that the action

of the third respondent in placing the petitioner under forced leave for a period of one year is illegal and is in violation of the mandatory provisions of Section 47 of the Act. He further contended that the representation submitted by the petitioner seeking alternative employment is kept pending and till date no action has been taken by the respondents, therefore, he sought for interference of this Court.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Corporation. Both of them agreed that the subject matter of this writ petition is covered by the judgment of the apex Court in **KUNAL SINGH Vs. UNION OF INDIA**[1]**,** and prayed for disposal of the writ petition in terms thereof.

The Apex Court in **KUNAL SINGH Vs. UNION OF INDIA** (1 supra), held that the very frame and contents of section 47 of the Act are mandatory in nature and in the event the employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. The relevant portion reads as hereunder:

> "It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post

> he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

The impugned order placing the petitioner under forced leave for a period of one year on the ground that he was found unfit for the post of A-1 category driver, does not refer to any Rule or circular which empowers the respondents to place a person under forced leave. The respondents instead of placing the petitioner under forced leave, ought to have taken appropriate steps to accommodate him in any alternative employment in terms of Section 47 of the Act. The Apex Court in **Kunal Singh case** (1 supra), specifically held that the very frame and contents of section 47 of the Act clearly indicate its mandatory nature and an employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act. Hence, the impugned proceedings dated 07.01.2006 placing the petitioner under forced leave, is unsustainable and the same is hereby set aside. The respondents are directed to provide alternative employment to the

petitioner in terms of Section 47 of the Act. It is made clear that the petitioner is entitled to salary and other benefits for the period from the date he was placed under forced leave till the date he was placed in an alternative employment in terms of section 47 of the Act.

Accordingly, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date: 13.12.2006
Nsr/Sj

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[1] AIR 2003 SC 1623